

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

TYRONE KEYS

Plaintiff/Counter-Defendant.

V.

Case No. 8:18-cv-02098-CEH-JSS

**BERT BELL/PETE ROZELLE NFL
PLAYER RETIREMENT PLAN and the
NFL PLAYER DISABILITY &
NEUROCOGNITIVE BENEFIT PLAN**

Defendants/Counter-Plaintiffs.

**DEFENDANTS'/COUNTER-PLAINTIFFS' MOTION TO COMPEL
WRITTEN DISCOVERY AND DEPOSITION TESTIMONY**

Pursuant to Rule 37 of the Federal Rules of Civil Procedure, Defendants/Counter-Plaintiffs Bert Bell/Pete Rozelle NFL Player Retirement Plan and NFL Player Disability & Neurocognitive Benefit Plan (together “Plans”) move the Court for an order compelling Plaintiff/Counter-Defendant Tyrone Keys to (1) provide adequate responses to the Plans’ written discovery requests by August 30, 2019, and (2) appear for deposition along with his wife, Bessie Keys, by the September 6, 2019 discovery deadline. The discovery sought by the Plans relates to their recently-joined counterclaims, which seek to recover approximately \$1,000,000 in disability overpayments made to Keys due to his false statements and submissions. The motion is necessary because Keys refuses to respond meaningfully to the Plans’ written discovery requests, and neither he nor his wife will voluntarily appear for a deposition. Time is of the essence because the Plans would like to receive and have time to review Keys’ written discovery responses before conducting the

depositions, and this all must be accomplished prior to the close of discovery on September 6, 2019, unless the Court extends the discovery deadline to accommodate the discovery.

BACKGROUND

Keys initiated this case in August 2018. *See generally* Compl. (ECF 1). His claim is a claim for benefits under section 502(a)(1)(B) of ERISA, 29 U.S.C. § 1132(a)(1)(B). His goal is to overturn the Plans' decision to reduce and then turn off his monthly disability benefits after the Plans discovered that Keys knowingly submitted false and misleading information to the Plans over a number of years.

The Plans answered Keys' Complaint and joined their own counterclaims on June 24, 2019. *See generally* Defs.' Answer to Pl.'s First Am. Compl. and Defs.' Counterclaims ("Ans. & Counterclaim," ECF 39). The Plans' counterclaims are brought under section 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3). They seek declaratory and equitable relief related to the approximately \$1,000,000 in disability benefits overpaid to Keys due to his fraudulent conduct, including (1) a declaration that Keys was overpaid "line-of-duty" ("LOD") disability and total and permanent disability ("T&P") benefits; (2) an order for accounting; (3) an order of restitution; and (4) the imposition of a constructive trust over funds that Keys wrongfully received from the Plans, and all assets traceable to those funds. *See* Ans. & Counterclaim at 23, ¶ 27; 31- 32, ¶ 56; 33, ¶ 60.

On June 28, 2019, the Plans served Keys with their First Interrogatories and Requests for Production. The discovery consisted of seven interrogatories and six requests for production focusing on (1) the amount of the LOD overpayment to Keys, and (2) whether Keys has funds or assets traceable to the LOD and T&P disability overpayments. The discovery was no surprise; the Plans informed Keys at the outset of this case that they intended to conduct such discovery. *See* Case Mgmt. Rpt. (ECF 18) at 10 ("Defendants intend to countersue Plaintiff to obtain a judgment

against him in the amount of disability benefits overpaid to him, plus interest. Defendants anticipate minimal discovery with respect to these counterclaims.”).

On July 29, Keys answered the Plans’ discovery requests with blanket objections. Since answering the discovery, Keys has stated that he will not supplement his written responses. He has also said that neither he nor his wife, Bessie Keys, will voluntarily appear for deposition.¹ Keys objects to all forms of discovery against him because he believes the evidence with respect to the Plans’ counterclaims should be restricted to the Administrative Record. Alternatively, Keys proposes that discovery on the Plans’ counterclaims be delayed until after the parties brief, and the Court decides, whether the Plans overpaid him.

Keys’ objections are unfounded, and the Court should overrule them. The discovery sought by the Plans—particularly traceability discovery—goes to the heart of the Plans’ counterclaims. *See Montanile v. Bd. of Trustees of Nat. Elevator Indus. Health Benefit Plan*, 136 S. Ct. 651, 656–58 (2016) (equitable lien requires identification of traceable assets; expenditure of a fund on non-traceable items destroys the equitable lien); *Great-W. Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 213 (2002) (a constructive trust is available “where money or property identified as belonging in good conscience to the plaintiff could clearly be traced to particular funds or property in the defendant’s possession”). Keys knows traceability is a crucial element of this case. One of his affirmative defenses to the Plans’ counterclaims is that the Plans “have not identified any fund that is traceable to the alleged overpayment....” Pl.’s Ans. to Defs.’ Counterclaims (ECF 40) at 7 ¶ 5.

¹ Counsel first met-and-conferred on this issue by telephone on July 31, 2019. On August 7, 2019, the Plans served a notice of deposition for Keys and a subpoena for the deposition of Mrs. Keys, and asked Keys to reconsider his position on discovery. Keys responded on August 9, 2019, and confirmed that his position had not changed.

Courts routinely allow discovery of the type sought by the Plans because a plan's entitlement to equitable relief depends, in the first instance, on whether the participant still holds funds or assets traceable to the overpayments. *See, e.g., Montanile*, 136 S. Ct. at 662 (because there was an unresolved factual issue about whether the fund was dissipated, remand was necessary so the district court could make that determination); *Bd. of Trustees of Nat'l Elevator Indus. Health Benefit Plan v. Goodspeed*, 377 F. Supp. 3d 471, 473–74 (E.D. Pa. 2019) (“Because the Plan’s claim is the existence of one or more specific funds against which an equitable lien could be attached... [t]he Court ordered bifurcated discovery, proceeding first on the issue of whether there is an appropriate fund for an equitable lien, assuming that Plaintiff had a meritorious claim.”).²

Discovery beyond the Administrative Record is necessary because the Administrative Record does not reveal what Keys did with the Plans’ funds. It also does not reveal what workers’ compensation benefits Keys has received. Keys concealed that information from the Plans; that is the very basis for the Plans’ counterclaim to recover LOD overpayments.

Keys’ objection to deposition discovery is similarly baseless. The Plans have every right to depose Keys and his wife because they both have knowledge of facts relevant to the Plans’

² *See also Jette v. United of Omaha Life Ins. Co.*, No. CV 18-11650-JCB, 2019 WL 3027745, at *6 (D. Mass. July 11, 2019) (denying motion to dismiss counterclaims for reimbursement, and allowing limited discovery on the issue of whether the settlement funds are in the possession of the defendant); *Herman v. Metro. Life Ins. Co.*, 689 F. Supp. 2d 1316, 1331 (M.D. Fla. 2010) (Plaintiff should have conducted discovery on the issue of the existence of an identifiable fund; it could not wait until the court should enter judgment in plaintiff’s favor on its reimbursement claim. That would “put the cart before the horse.” In fact, “[t]he discovery MetLife seeks here will determine *whether* it is entitled to bring a Section 1132(a)(3) claim to fruition, *i.e.*, to judgment. As such, the discovery MetLife requests should have been taken during the regular discovery period.”); *UnitedHealth Grp., Inc. v. Dowdy*, No. 806CV2111T23EAJ, 2007 WL 3202473, at *2 (M.D. Fla. Oct. 29, 2007) (Because a plan fiduciary is limited to recovery from settlement or judgment funds, not from the general assets of a plan participant, the existence, identification and dissipation of Defendant’s settlement proceeds are relevant to Plaintiff’s ability to recover on its equitable claim. Such discovery is relevant to Defendant’s possession and control over the settlement funds); *Sec. Mut. Life Ins. Co. v. Joseph*, No. 06-CV-4804, 2007 U.S. Dist. LEXIS 47664, at *6-7 (E.D. Pa. June 29, 2007) (If a fund is not identifiable or are dissipated, a plan fiduciary is precluded from continuing the suit for lack of a remedy); *Cruz v. Sun Life Assur. Co.*, No. 07-2391, 2007 U.S. Dist. LEXIS 65388, at *5 (D.N.J. Sept. 4, 2007) (discovery relating to plan participant’s finances was necessary in order to ascertain the existence of disputed overpayments); *Greenes v. Adornato*, 2004 WL 213089, at *3 (S.D.N.Y. Feb. 4, 2004) (ordering parties to conduct limited discovery as to whether defendant, as alleged, was not holding funds in constructive trust but, rather, had dissipated such funds).

counterclaims. Depositions are particularly critical here given Keys' failure to provide any meaningful response to the Plans' written discovery requests. Depositions may be the only way for the Plans to obtain vital evidence in support of their counterclaims.

Keys' proposal to delay discovery, for any reason, is not only contrary to the law, but it is unworkable. Every day that Keys delays discovery further prejudices the Plans, because it increases the likelihood that Keys will dissipate the Plans' funds, making it all the more difficult for the Plans to recover their overpayments.

For these reasons, and for the additional reasons that follow, the Court should (1) compel Keys to provide complete responses to the Plans' written discovery requests by August 30, 2019, and (2) order Keys and his wife, Bessie Keys, to submit to depositions by the September 6, 2019 discovery deadline. If the Court cannot resolve this motion in a timeframe that would give the Plans adequate time to receive and review the written discovery responses before conducting the depositions in advance of the discovery deadline, the Court should extend the discovery deadline; compel Keys to provide complete responses to the Plans' written discovery requests by a date certain; and order Keys and his wife to submit to depositions seven days later.

CONTESTED DISCOVERY REQUESTS³

INTERROGATORY NO. 1: Detail your receipt of workers' compensation benefits from any source prior to January 1, 1997, including the date(s) you applied for workers' compensation benefits, the date(s) you were awarded workers' compensation benefits, and the date(s) and gross or net amount(s) of any workers' compensation benefits paid to you.

RESPONSE: Keys objects to this interrogatory on the basis that it is unduly burdensome and overly broad in time and scope and is neither relevant nor reasonably calculated to lead to the discovery of relevant evidence as it seeks documents outside the Administrative Record. Keys further objects because this request relates to the Plans' counterclaim for

³ In compliance with Local Rule 3.04, this motion includes a full quotation of each interrogatory and request for production, Keys' response, and a statement of the reasons why the motion to compel should be granted.

reimbursement for alleged overpayments of Line of Duty benefits, and the Plans did not exhaust their administrative remedies prior to making this claim against Keys.

Subject to these objections, please see Keys application for T&P disability benefits, submitted on September 13, 2003 and received by the Plans' benefits office on September 16, 2003, in which Keys indicates that he received \$39,000 in 1990 for a workers' compensation claim brought in California (Keys_AR 00581).

The Plans move to compel an adequate response to this interrogatory, and the motion should be granted for the following reasons:

The interrogatory is not unduly burdensome, nor is it overly broad in time and scope. It is limited to the timeframe in which Keys received LOD payments from the Plans, and it is designed to ascertain the amount of workers' compensation benefits that Keys received during that timeframe. This information is relevant to the Plans' counterclaims; it will establish the amount of the LOD overpayment to Keys, because Keys' LOD payments should have been reduced by the amount of any workers' compensation benefits he received.

Keys' objection that the interrogatory seeks documents and information outside the Administrative Record is baseless. In considering Keys' claim for benefits under ERISA section 502(a)(1)(B), the Court will review the Plans' decision to reduce and terminate Keys' monthly benefits for abuse of discretion based on the record before the plan administrator at the time of its decision. The Plans' counterclaims, however are brought pursuant to ERISA section 502(a)(3), which is not reviewed by the Court on the administrative record. Moreover, the administrative record here does not show the full amount of workers' compensation benefits that Keys received, making discovery necessary, because Keys hid this information from the Plans when he applied for and subsequently received disability benefits.

The Court should overrule Keys' objection that the Plans did not exhaust their administrative remedies because the Plans are not required to exhaust administrative remedies

prior to bringing claims for reimbursement. *See Reliance Standard Life Ins., Co. v. Smith*, No. 3:05-cv-467, 2006 WL 2993054, *3 (E.D. Tenn. Oct. 18, 2006) (“As Reliance is not a beneficiary/participant under the plan, it is not required to exhaust any administrative procedures on the overpayment claim.”). And, in any event, Keys’ assertion of an affirmative defense to the Plans’ counterclaim does not preclude the Plans from conducting discovery. The counterclaim is part of the case, and the Plans may therefore conduct discovery on issues related to it. *See Fed. R. Civ. P. 26(b)* (“Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense....”).

* * * *

REQUEST FOR PRODUCTION NUMBER 1: Produce any summaries, statements, or documents showing the amount of workers’ compensation benefits paid to you from any source prior to January 1, 1997, including but not limited to any documents identified or consulted in answering Interrogatory Number 1.

RESPONSE: Keys objects to this request for production on the basis that it is unduly burdensome and overly broad in time and scope and is neither relevant nor reasonably calculated to lead to the discovery of relevant evidence as it seeks documents outside the Administrative Record. Keys further objects because this request relates to the Plans’ counterclaim for reimbursement for alleged overpayments of Line of Duty benefits, and the Plans did not exhaust their administrative remedies prior to making this claim against Keys.

Subject to these objections, please see Keys application for T&P disability benefits, submitted on September 13, 2003 and received by the Plans’ benefits office on September 16, 2003, in which Keys indicates that he received \$39,000 in 1990 for a workers’ compensation claim brought in California (Keys_AR 00581).

The Plans move to compel an adequate response to this request for production, and the motion should be granted for the following reasons:

Keys’ objections are unfounded for the same reasons set forth above, regarding Interrogatory Number 1. In addition, Keys’ response is inadequate because it does not “state

whether any responsive materials are being withheld on the basis of [his] objection[s].” Fed. R. Civ. P. 34(b)(2)(C).

* * * *

REQUEST FOR PRODUCTION NUMBER 2: Produce any documents relating to your request for or receipt of workers’ compensation benefits from any source at any point prior to January 1, 1997, including but not limited to any documents identified or consulted in answering Interrogatory Number 1.

RESPONSE: Keys objects to this request for production on the basis that it is unduly burdensome and overly broad in time and scope and is neither relevant nor reasonably calculated to lead to the discovery of relevant evidence in this action as it seeks documents outside the Administrative Record. Keys further objects because this request relates to the Plans’ counterclaim for reimbursement for alleged overpayments of Line of Duty benefits, and the Plans did not exhaust their administrative remedies prior to making this claim against Keys.

Subject to these objections, please see Keys application for T&P disability benefits, submitted on September 13, 2003 and received by the Plans’ benefits office on September 16, 2003, in which Keys indicates that he received \$39,000 in 1990 for a workers’ compensation claim brought in California (Keys_AR 00581).

The Plans move to compel an adequate response to this request for production, and the motion should be granted for the following reasons:

Keys’ objections are unfounded for the same reasons set forth above, regarding Interrogatory Number 1. In addition, Keys’ response is inadequate because it does not “state whether any responsive materials are being withheld on the basis of [his] objection[s].” Fed. R. Civ. P. 34(b)(2)(C).

* * * *

INTERROGATORY NUMBER 2: Identify any bank, financial institution, or investment fund where you have held an account in your name (individually or jointly) from January 1, 1992 to the present.

RESPONSE: Keys objects to this interrogatory on the basis that it is unduly burdensome and overly broad in time and scope and is neither relevant nor reasonably calculated to lead to the discovery of relevant evidence in this action as it seeks information outside the Administrative Record. Keys further objects on the grounds of his right to financial privacy.

Keys further objects because this attempt to trace assets to impose a equitable lien based upon an alleged overpayment has to be done during the ERISA administrative claims process.

Keys further objects because this request, if allowed during litigation and after the administrative claims process is closed, is premature. In the unlikely event that the Court finds that one or both of the Defendant Plans are entitled to any reimbursement from Keys under the facts as presented in and confined to the Administrative Record, then after such finding, if such discovery is permitted outside of the administrative claims process, the Defendants then might engage in discovery, limited in scope and time, to attempt to trace the overpayment in order to establish an equitable lien on such a fund or asset.

The Plans move to compel an adequate response to this interrogatory, and the motion should be granted for the following reasons:

Keys' objections are unfounded and should be overruled. The Plans' counterclaims for equitable relief exist only to the extent that the Plans are able to trace Plan assets to funds or other assets in Keys' possession, custody, or control. *See Montanile v. Bd. of Trustees of Nat. Elevator Indus. Health Benefit Plan*, 136 S. Ct. 651, 656–58 (2016) (equitable lien requires identification of traceable assets; expenditure of a fund on non-traceable items destroys the equitable lien); *Great-W. Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 213 (2002) (a constructive trust is available “where money or property identified as belonging in good conscience to the plaintiff could clearly be traced to particular funds or property in the defendant’s possession”). Consequently, courts routinely permit such discovery during the main phase of the case. *See supra* at 4, n.2 (citing cases allowing traceability discovery). Thus, the Plans' discovery is not premature.

The interrogatory is not unduly burdensome or overly broad. It is confined to the timeframe in which Keys received disability payments from the Plans, and it is designed to identify locations

where Keys may have deposited or transferred the Plans' funds, or test any representations Keys might make about where he deposited or transferred the Plans' funds.

Keys' "right to financial privacy" provides no basis to object to a valid discovery request under the Federal Rules of Civil Procedure.

Keys' objection that this discovery must be done "during the ERISA administrative claims process" has no basis in law or logic. A plan administrator does not have to institute or exhaust an administrative claims procedure before prosecuting an overpayment claim. *See Reliance Standard Life Ins., Co. v. Smith*, No. 3:05-cv-467, 2006 WL 2993054, *3 (E.D. Tenn. Oct. 18, 2006) ("As Reliance is not a beneficiary/participant under the plan, it is not required to exhaust any administrative procedures on the overpayment claim."). In any event, this case exists because, in Defendants' view, Keys actively concealed key facts during the previous administrative claims process. There is no reason to believe that he would be forthcoming about his finances during a hypothetical future administrative claims process.

* * * *

REQUEST FOR PRODUCTION NUMBER 3: Produce copies of statements for any bank, financial, or investment account held in your name (jointly or individually) from January 1, 1992 to the present, including but not limited to any statements from any bank or institution identified in answering Interrogatory Number 2.

RESPONSE: Keys objects to this request for production on the basis that it is unduly burdensome and overly broad in time and scope and is neither relevant nor reasonably calculated to lead to the discovery of relevant evidence in this action as it seeks information outside the Administrative Record. Keys further objects on the grounds of his right to financial privacy.

Keys further objects because this attempt to trace assets to impose a equitable lien based upon an alleged overpayment has to be done during the ERISA administrative claims process.

Keys further objects because this request, if allowed during litigation and after the administrative claims process is closed, is premature. In the unlikely event that the Court finds that one or both of the Defendant Plans are entitled to any reimbursement from Keys under the facts as presented in and confined to the Administrative Record, then after such finding, if such discovery is permitted outside of the administrative claims process, the Defendants then might engage in discovery, limited in scope and time, to attempt to trace the overpayment in order to establish an equitable lien on such a fund or asset.

The Plans move to compel an adequate response to this request for production, and the motion should be granted for the following reasons:

Keys' objections are unfounded for the same reasons set forth above, regarding Interrogatory Number 2. In addition, Keys' response is inadequate because it does not "state whether any responsive materials are being withheld on the basis of [his] objection[s]." Fed. R. Civ. P. 34(b)(2)(C).

* * * *

INTERROGATORY NUMBER 3: Identify any bank, financial institution, or investment fund account into which you deposited or transferred, at any time, NFL Player Plan funds.

RESPONSE: Keys objects to this interrogatory on the basis that it is unduly burdensome and overly broad in time and scope and is neither relevant nor reasonably calculated to lead to the discovery of relevant evidence in this action as it seeks information outside the Administrative Record. Keys further objects on the grounds of his right to financial privacy.

Keys further objects because this attempt to trace assets to impose a equitable lien based upon an alleged overpayment has to be done during the ERJSA administrative claims process.

Keys further objects because this request, if allowed during litigation and after the administrative claims process is closed, is premature. In the unlikely event that the Court finds that one or both of the Defendant Plans are entitled to any reimbursement from Keys under the facts as presented in and confined to the Administrative Record, then after such finding, if such discovery is permitted outside of the administrative claims process, the Defendants then might engage in discovery, limited in scope and time, to attempt to trace the overpayment in order to establish an equitable lien on such a fund or asset.

The Plans move to compel an adequate response to this interrogatory, and the motion should be granted for the following reasons:

Keys' objections are unfounded for the same reasons set forth above, regarding Interrogatory Number 2.

* * * *

REQUEST FOR PRODUCTION NUMBER 4: Produce copies of statements for any bank, financial, or investment account into which you deposited or transferred, at any time, NFL Player Plan funds, including but not limited to any statements from any bank or financial institution identified in answering Interrogatory Number 3.

RESPONSE: Keys objects to this request for production on the basis that it is unduly burdensome and overly broad in time and scope and is neither relevant nor reasonably calculated to lead to the discovery of relevant evidence in this action as it seeks information outside the Administrative Record. Keys further objects on the grounds of his right to financial privacy.

Keys further objects because this attempt to trace assets to impose a equitable lien based upon an alleged overpayment has to be done during the ERISA administrative claims process.

Keys further objects because this request, if allowed during litigation and after the administrative claims process is closed, is premature. In the unlikely event that the Court finds that one or both of the Defendant Plans are entitled to any reimbursement from Keys under the facts as presented in and confined to the Administrative Record, then after such finding, if such discovery is permitted outside of the administrative claims process, the Defendants then might engage in discovery, limited in scope and time, to attempt to trace the overpayment in order to establish an equitable lien on such a fund or asset.

The Plans move to compel an adequate response to this request for production, and the motion should be granted for the following reasons:

Keys' objections are unfounded for the same reasons set forth above, regarding Interrogatory Number 2. In addition, Keys' response is inadequate because it does not "state whether any responsive materials are being withheld on the basis of [his] objection[s]." Fed. R. Civ. P. 34(b)(2)(C).

* * * *

INTERROGATORY NUMBER 4: Identify any real or personal property currently owned in your name (individually or jointly) that is worth \$1,000 or more and was purchased in whole or in part using NFL Player Plan funds; state the purchase price and/or current value of the property; and provide the date that you purchased the property.

RESPONSE: Keys objects to this interrogatory on the basis that it is unduly burdensome and overly broad in time and scope and is neither relevant nor reasonably calculated to lead to the discovery of relevant evidence in this action as it seeks information outside the Administrative Record. Keys further objects on the grounds of his right to financial privacy.

Keys further objects because this attempt to trace assets to impose a equitable lien based upon an alleged overpayment has to be done during the ERISA administrative claims process.

Keys further objects because this request, if allowed during litigation and after the administrative claims process is closed, is premature. In the unlikely event that the Court finds that one or both of the Defendant Plans are entitled to any reimbursement from Keys under the facts as presented in and confined to the Administrative Record, then after such finding, if such discovery is permitted outside of the administrative claims process, the Defendants then might engage in discovery, limited in scope and time, to attempt to trace the overpayment in order to establish an equitable lien on such a fund or asset.

Subject to these objections, the following tax returns that are part of the Administrative Record identify any real property owned by Keys:

Keys 2000 and 2001 tax returns (Keys_AR 00583-613);
Keys 2002 tax returns (Keys_AR 00736-00750);
Keys 2007 tax returns (Keys_AR 01281-01312);
Keys 2008 tax returns (Keys_AR 01042-01429);
Keys 2009 tax returns (Keys_AR 01585-01611);
Keys 2010 tax returns (Keys_AR 01887-01909);
Keys 2011-2013 tax returns (Keys_AR 03718-03826); and
Keys 2015 tax returns (Keys_AR 03686-03716).

The Plans move to compel an adequate response to this interrogatory, and the motion should be granted for the following reasons:

Keys' objections are unfounded for the same reasons set forth above, regarding Interrogatory Number 2. Keys' historical tax returns do not begin to answer this interrogatory.

* * * *

INTERROGATORY NUMBER 5: Identify any real or personal property currently owned exclusively in your wife's name that is worth \$1,000 or more and was purchased in whole or in part using NFL Player Plan funds; state the purchase price and/or current value of the property; and provide the date that the property was purchased.

RESPONSE: Keys objects to this interrogatory on the basis that it is unduly burdensome and overly broad in time and scope and is neither relevant nor reasonably calculated to lead to the discovery of relevant evidence in this action as it seeks information outside the Administrative Record. Keys further objects on the grounds of his right to financial privacy.

Keys further objects because this attempt to trace assets to impose a equitable lien based upon an alleged overpayment has to be done during the ERISA administrative claims process.

Keys further objects because this request, if allowed during litigation and after the administrative claims process is closed, is premature. In the unlikely event that the Court finds that one or both of the Defendant Plans are entitled to any reimbursement from Keys under the facts as presented in and confined to the Administrative Record, then after such finding, if such discovery is permitted outside of the administrative claims process, the Defendants then might engage in discovery, limited in scope and time, to attempt to trace the overpayment in order to establish an equitable lien on such a fund or asset.

Subject to these objections, the following tax returns that are part of the Administrative Record identify any real property owned by Bessie Keys:

Keys 2000 and 2001 tax returns (Keys_AR 00583-613);
Keys 2002 tax returns (Keys_AR 00736-00750);
Keys 2007 tax returns (Keys_AR 01281-01312);
Keys 2008 tax returns (Keys_AR 01042-01429);
Keys 2009 tax returns (Keys_AR 01585-01611);
Keys 2010 tax returns (Keys_AR 01887-01909);
Keys 2011-2013 tax returns (Keys_AR 03718-03826); and
Keys 2015 tax returns (Keys_AR 03686-03716).

The Plans move to compel an adequate response to this interrogatory, and the motion should be granted for the following reasons:

Keys' objections are unfounded for the same reasons set forth above, regarding Interrogatory Number 2. Keys' historical tax returns do not begin to answer this interrogatory.

* * * *

INTERROGATORY NUMBER 6: Identify any real or personal property that was owned in your name (individually or jointly) or owned exclusively in your wife's name, and that was worth \$1,000 or more and was purchased in whole or in part using NFL Player Plan funds, that you have sold, transferred ownership interest in, or otherwise disposed of since August 1, 2017. For any such property, provide the date of sale, transfer, or disposition; state why you sold, transferred, or disposed of the property; provide the purchase price and/or any other consideration you received for the property; identify the purchasing or receiving person(s) or entity(ies); and state where you deposited and/or currently hold the proceeds or other consideration from the sale, transfer, or disposition of said property.

RESPONSE: Keys objects to this interrogatory on the basis that it is unduly burdensome and overly broad in time and scope and is neither relevant nor reasonably calculated to lead to the discovery of relevant evidence in this action as it seeks information outside the Administrative Record. Keys further objects on the grounds of his right to financial privacy.

Keys further objects because this attempt to trace assets to impose a equitable lien based upon an alleged overpayment has to be done during the ERISA administrative claims process.

Keys further objects because this request, if allowed during litigation and after the administrative claims process is closed, is premature. In the unlikely event that the Court finds that one or both of the Defendant Plans are entitled to any reimbursement from Keys under the facts as presented in and confined to the Administrative Record, then after such finding, if such discovery is permitted outside of the administrative claims process, the Defendants then might engage in discovery, limited in scope and time, to attempt to trace the overpayment in order to establish an equitable lien on such a fund or asset.

The Plans move to compel an adequate response to this interrogatory, and the motion should

be granted for the following reasons:

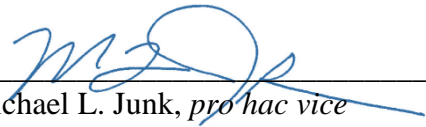
Keys' objections are unfounded for the same reasons set forth above, regarding Interrogatory Number 2.

CONCLUSION

For the foregoing reasons, the Court should grant this motion and compel Keys to (1) provide adequate responses to the Plans' written discovery requests by August 30, 2019, and (2)

appear for deposition along with his wife, Bessie Keys, by the September 6, 2019 discovery deadline. Alternatively, if the Court cannot resolve this motion in a timeframe that would give the Plans adequate time to receive and review the written discovery responses before conducting the depositions in advance of the discovery deadline, the Court should extend the discovery deadline; compel Keys to provide complete responses to the Plans' written discovery requests by a date certain; and order Keys and his wife to submit to depositions seven days later.

Dated: August 12, 2019



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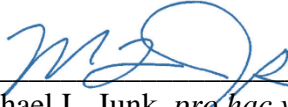
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CERTIFICATION OF PRE-FILING CONFERENCE

Pursuant to Local Rule 3.01(g), the undersigned counsel represents that, prior to filing this motion, counsel for Defendants conferred with counsel for Plaintiff in a good faith effort to resolve the issues raised by the motion. However, the parties were unable to agree on a resolution.

Dated: August 12, 2019



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